

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

EUGENA FOSTER,

Plaintiff,

v.

**JAMES FLEMING and
DONNA TORRES,**

Defendants.

2:17-cv-13687

HON. TERRENCE G. BERG

**ORDER ADOPTING
REPORT AND
RECOMMENDATION ON
MOTION TO DISMISS**

This matter is before the Court on Magistrate Judge R. Steven Whalen's January 28, 2019 Report and Recommendation (ECF No. 15) recommending that Defendants James Fleming and Donna Torres's motion to dismiss be granted. The Court has reviewed the Magistrate Judge's Report and Recommendation. The law provides that either party may serve and file written objections "[w]ithin fourteen days after being served with a copy" of the report and recommendations. 28 U.S.C. § 636(b)(1). As of this date, neither

party has filed any objections to Magistrate Judge Whalen's Report and Recommendation.

The district court will make a “*de novo* determination of those portions of the report . . . to which objection is made.” *Id.* Where, as here, neither party objects to the report, the district court is not obligated to independently review the record. *See Thomas v. Arn*, 474 U.S. 140, 149-52 (1985). Nevertheless, the Court has reviewed the Magistrate Judge's Report and Recommendation of January 28, 2019 and will accept it as this Court's findings of fact and conclusions of law, with the caveat that the Court will dismiss Plaintiff's complaint without prejudice (rather than with prejudice, as recommended by Magistrate Judge Whalen).

Accordingly, it is hereby **ORDERED** that Magistrate Judge Whalen's Report and Recommendation of January 28, 2019 (ECF No. 15) is **ACCEPTED** and **ADOPTED** with one modification: the Court will dismiss Plaintiff's complaint without prejudice. It is further ordered that the Defendants James Fleming and Donna

Torres's motion to dismiss (ECF No. 12) is **GRANTED**. The Complaint is hereby **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Dated: February 19, 2019

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically submitted on February 19, 2019, using the CM/ECF system, which will send notification to all parties.

s/A. Chubb
Case Manager